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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 382

FLAVIANA TAN, Widow of Aniceto Bernal, in Her Own Right, and as Natural Guardian of Her Minor Children, Jose Bernal, Fidel Bernal, Emiliana Bernal and Milagros Bernal, by Her Lawful Husband, ANICETO BERNAL,
Petitioners,

v.

THE UNITED STATES.

REPLY TO BRIEF OF THE UNITED STATES IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

INTRODUCTION

Upon the filing of the Petition for a Writ of Certiorari, counsel for petitioners addressed a letter to the Acting Solicitor General of the United States (App. 2), and later to the Attorney General of the United States, requesting the United States not to oppose the Petition for a Writ of Certiorari. After the exchange of letters a conference was held and the request, while not denied (App. 2) was, in effect, denied by the filing of a Brief in Opposition, *except* for the concession

made in *Footnote 7, page 11*, pertinent portions of which read, as follows:

> "The suggestion (Pet. 7-8) that the same '*fundamental questions*' *arise here* as in the *Marcos* case, and that the present petition should therefore be granted, *is plainly misconceived.* * * * ."
>
> "Of course, *if the present petition is granted, the Government will urge,* as additional, or perhaps *primary,* grounds for the decision below, the arguments made in *Marcos, including the argument* that under 28 U.S.C. 2501, the statute of limitations would run only for three years from the end of the period of suspension. *This latter argument, rejected by the Court of Claims in Marcos, affects about 50 cases now pending in that court. If it were thought likely that the Court would reach this point in the instant case, the Government would, accordingly, not oppose the instant petition.* However, because the determination that the period of suspension of the statute of limitations ended on September 2, 1945, disposes of the instant case, and because we think the result of this determination is clearly correct as to the present petitioners (though we believe the date should be even earlier than September 2, 1945), *it seems unnecessary to reach the more important Marcos issue here.* (Italics supplied.)

It is obvious from the foregoing footnote and the known facts (App. 2) that the Government intends to file a Petition for a Writ of Certiorari in the *Marcos* and other similar cases, and that were all questions to be determined by the subject case the United States would not oppose the granting of the petition in this case. Accordingly, a reply is required to apprise this Court more fully, if not done so in the petition, of the reasons why the petition should be granted in the subject case, regardless of whether or not the Court reaches the question considered of importance to the United States, as well as if the Court should do so, as all of the questions sought to be argued herein would be argued in the *Marcos* case.

THE MARCOS AND TAN CASES

The *Marcos* and *Tan* cases were for the *first* time decided February 5, 1952 (102 F. Supp. 547).

In the *Marcos* case, under Point (1), the Court said:

> "Although this Statute does not mention war, we have had occasion in a recent case to consider the effect of war on the Statute of Limitations. * * *"

This question is involved in the *Tan* case.

Under Point (2), the Court said, in part:

> "* * * and where the cause of action accrues after war has commenced, the claimant is entitled to the full six-year period after the war's end within which to file suit. * * * Where the Statute has begun to run prior to the commencement of war it has been held that the claimant is also entitled to the full statutory period of six years, and that the exact period of the war's duration should be deducted in determining the day on which the bar of limitations arises. * * *"

The first quoted portion deals with the *Marcos* case; the second with the *Tan* case.

Under Point (3), the Court said, as follows:

* * * * *

> "The next problem confronting us is to determine the event which terminated the war and brought to a close the period of suspension of the Statute of Limitations. A number of dates and events have been presented for our consideration, in this case, and in the related cases of Tan v. U. S., Ct. Cl., 102 F. Supp. 552; Francisca De Guia and Beatriz B. Palmares, No. 50342; Paulino Lorenzo, No. 50357; and Raymundo F. Navarro, No. 50358; this day decided. We shall here discuss the various contentions urged in all five cases with regard to the lifting of the suspension of the Statute. * * *"

Very obviously the Court was considering the *Tan* case at the same time as the *Marcos* case on this point.

Under Points (4) and (5), the Court said:

> "The *logical date* to select as lifting the suspension of the Statute of Limitations under the circumstances of this case is the day of the formal surrender of the Japanese, September 2, 1945. It was on this occasion that the above-mentioned reasons for suspending the running of the Statute ceased to exist, inasmuch as commercial intercourse by the United States with the Philippine Islands was thereby restored, and likewise, access to this court by all Filipinos once again became possible. * * *" (Italics supplied.)

It is this "logical date" of September 2, 1945 which, in the opinion of the Court of Claims, foreclosed the petitioners herein before that Court. The date was applicable in both cases.

Under Point (6), the Court said, in part:

> "Plaintiff alleges that a similar right is granted to citizens of the United States under the provisions of Public Law No. 3083 of the Philippine Legislature, March 16, 1923, 18 P. L. of Philippines 169, which Act continues to be the law of the Philippine Republic. * * *"

The question of the right to sue in the Court of Claims is present in both cases.

The United States filed a petition for a rehearing in the *Marcos* case, and the petitioners herein filed a similar petition in the subject case. Both petitions were denied—that in the subject case without opinion, that in the *Marcos* case with opinion.

Every question raised in the opinion of July 15, 1952, the second opinion in the *Marcos* case (106 F. Supp. 172), was present in the subject case. That the subject case was in fact under consideration in the second decision in the *Marcos* case is evident from the following quotations from pages 177 and 179:

> "In urging the contention that war is a legal disability giving rise to only a three-year period following the re-

turn of peace within which to institute suit, defendant has disregarded the consequences of such a construction upon causes of action accruing prior to the start of war. The case of Tan v. United States, D. C., 102 F. Supp. 552, presents an example of such a situation. Plaintiff Tan's cause of action against the United States Army accrued on November 3, 1941, and the Statute of Limitations began to run against it at this time. War broke out in Manila on December 8, 1941. If we were to adopt defendant's contention and were to conclude that war is a legal disability, the outbreak of war would have no effect on Tan's cause of action because, as indicated above, once the Statute has begun to run, intervening legal disabilities do not give rise to an additional period of grace following the removal of the disability within which to bring suit. To reach such a conclusion, we would have to disregard the fact that resort to this court by Filipinos was both impossible and illegal during the period here in question. It is clear that defendant's argument is erroneous and is contrary to the more logical conclusion reached in the leading decisions which have considered this problem. We, therefore, reaffirm the principle adopted in our earlier decision in this case that war, unlike 'legal disabilities,' impliedly suspended the normal operation of the Statute of Limitations, and that with the return of peace, plaintiff, whose cause of action accrued after the outbreak of war, had six years within which to file his suit."

* * * * *

"Plaintiff has once again presented arguments concerning the further suspension of the Statute of Limitations during the pendency of his claim before the Army Claims Commission. Inasmuch as all of these arguments have been considered at length in our decision in a companion case to the present action, Tan v. United States, *supra*, there is no point in discussing them further. * * *"

The interrelationship of the two cases seems obvious.
(Record p. 8.)

ALL CASES INVOLVED CAN BE DECIDED BY A DECISION IN THE SUBJECT CASE

The Question of Importance to the United States

The primary question of seeming importance to the United States in both the *Marcos* and *Tan* cases (although all of the questions herein were argued and considered of importance below), was that the Statute of Limitations is three years and not six years, under 28 U.S.C. 2501. The two questions of primary importance to petitioners are (1) that the claim did not accrue and the Statute of Limitations did not begin to run until after demand for payment and refusal, June 11, 1949 —a question not decided by the Court of Claims except by implication, and (2) that the Statute of Limitations was suspended until a date beyond September 2, 1951, to wit: August 31, 1946, or December 31, 1946, or June 11, 1949.

All three questions are of importance. The United States, in footnote 7, page 11, Brief in Opposition, admits that about fifty cases involve the question considered of importance to it. The same may be said about question numbered 1, considered of importance by petitioners and other claimants, as that is present in all of these cases. If question numbered one, of importance to the petitioners, is decided favorably to petitioners, then the question considered of importance to the United States, in many cases, need not be decided. Similarly, if question numbered two, of importance to petitioners, is decided favorably to petitioners, then it becomes necessary to decide the question considered of importance by the United States. Thus, the question considered of importance to the United States *can and should* be decided in this case.

In all events, the specification of errors to be urged, contained at pages 6 to 7 of the Petition for a Writ of Certiorari, are so framed as to permit the argument of all three questions.

Indeed, the Government has admitted in footnote 7 that it will argue them, saying "if the present petition is granted, the

government will urge, *as additional, or perhaps primary, grounds* for the decision below, the *arguments made in Marcos,* including the argument that under 28 U.S.C. 2501, the statute of limitations would run only for three years from the end of the period of suspension." (Italics supplied.)

There is thus an admission of the Government that every question involved in the cases pending in the Court of Claims, of which there are many more than fifty, can be decided by a decision in the subject case, as well as in *Francisca De Guia, et als.* v. *The United States,* No. 386, October Term, 1952. If it is of importance to the Government in the remaining cases, it is important in the subject case, and it would be unfair to deny the petition in this case and later permit the United States to select its cases for hearing by this Court, all on technical grounds. (*United States* v. *Dickinson,* 331 U. S. 745.)

It should be remembered that, in all of these cases, the claim is that the United States actually received goods and services for the defense of the United States, had the benefit of them in an all-out war, and merely failed to pay for them. Payment has been demanded and refused and should not be refused by this Court except upon the most cogent grounds. *International Paper Co.* v. *United States,* 282 U. S. 399, 406.

Petitioners' First Ground That the Claim Did Not Accrue Until Demand for Payment and Refusal

Respondent, page 6 of Brief in Opposition, has said that, in the case of requisitioning property, "it is well settled that the cause of action accrues at the time of the taking or at the time of the delivery of the property to the United States." In support thereof the United States cites *United States* v. *Dickinson, supra; United States* v. *North American Co.,* 253 U. S. 330, and *United States* v. *Berdan Fire-Arms Co.,* 156 U. S. 552.

In the *Dickinson* case, there was involved the building of a dam by the United States and the flooding of the claimant's property. In that case the Court held that the taking of

property, flooded by waters enclosed by a dam built by the United States, *cannot,* until the consequences of the inundation are known, be so complete as to start the running of the Statute of Limitations against a right of action against the United States, either under the Constitution or on an implied contract, even though the owner might have brought suit when the dam was completed.

It is in this case that this Court used the language quoted by petitioner at page 9 of the petition, and it stands for exactly the opposite from that for which cited by the United States.

In the *North American Co.* case General Randall, a military commander, took land in Alaska for an Army post, including a placer mine, in July, *1900.* In December, *1908,* the Secretary of War, the only person authorized by Congress to establish such a post and determine what land should be taken, approved the action of General Randall. Suit was brought. The Statute of Limitations was held to run from the time of approval of the Secretary of War and *not* the taking of the land in 1900, although admittedly the land was taken in 1900, certainly so far as possession or use by the claimant was concerned.

The decision in that case supports the very positions of petitioner in the subject case, as in both cases there was an implied contract for payment at the time of the taking, but the cause of action *accrued* only later.

In the *Berdan Fire-Arms Co.* case, the Court held that, where there is *no contract,* but merely a patent infringement by the Government, which is only a tort, this does not give rise to a cause of action in the Court of Claims. It held that the Statute of Limitations is a bar to any recovery for use of a patent prior to six years before suit is brought and that a reasonable royalty is a question of fact to be determined by the Court of Claims and not subject to review unless there is clear error to be found in other findings of that Court. The decision in that case has no application to the subject case.

This is not a case involving "optional remedies" such as to

bring it within the decisions in *United States* v. *Clyde,* 13 Wall. 35, and *Smithmeyer* v. *United States,* 147 U. S. 342, p. 7, Brief in Opposition.

In those cases, there were acknowledged *disputes.* The Court held that the claimants there had the right to administrative relief but were not required to resort to it as a condition to suing in the Court of Claims. In the subject case, there was *no dispute,* as the United States had not yet received a demand for payment. When this demand was made and refused, only then did the dispute come into being, and the claim *then* accrued.

In the rush of November, 1941, to build cantonments and prepare for the invasion of the Philippines—when there was not even time for General MacArthur to get an appropriation from Congress so that the President provided funds—until the return of American troops and the restoration of a semblance of peace and civilized conditions, there was no time for a dispute. There was no one of whom to make claim for goods unpaid for until the Army Claims Service was set up to receive, hear and determine them. These demands of petitioners were then duly made, and upon their rejection suit was brought in the Court of Claims, August 14, 1951.

Nor are the cases relied upon (p. 7, Brief in Opposition, to the effect that the Statute of Limitations is not suspended while claims are pending in an administrative agency impelling. They are primarily decisions of the Court of Claims, whose decision is complained of in the subject case. This Court has never decided this question, neither generally nor on facts at all related to the claims of Filipinos for nonpayment by the United States Army on account of requisitions in the prosecution of War.

Other cases relied upon in footnote 3, pages 6 and 7 of the Brief in Opposition, are based upon the proposition that "a cause of action accrues from the date of the *factual injury* to the claimant, not from the date of denial of administrative

relief, unless a statute makes the latter a legal prerequisite to further proceedings." (Italics supplied.)

This position is acceptable to petitioners but confuses the actual position of petitioners.

Petitioners urge that there was no *factual injury* until payment was refused. In the subject case the goods were delivered upon order of the Government for the building of the cantonment at Santo Tomas under orders of General MacArthur. There was no question that Bernal would be paid, unless it was a gift, and there is no such suggestion. There was an implied promise, although no price nor date of payment had been fixed. When Bernal returned, the engineer who would have approved his vouchers was no longer there, due to Army orders. Bernal was killed by the Japanese. His widow presented her claim to the Army Claims Service. Factual injury occurred when her claim was refused, and not until then. That is when the claim accrued, not on the date assumed by the Court of Claims, November 3, 1941. That point was completely disregarded below.

Petitioners' Second Ground That If the Claim Accrued November 3, 1941, the Statute of Limitations Was Suspended Beyond September 2, 1945.

The second part of the quoted portion of Brief in Opposition (Footnote 3, pages 7 and 8) deals with the suspension of the Statute, i.e., whether the Statute is suspended when one seeks administrative relief, quite a different question from that of the date of accrual of the claim.

At this point, the United States calls attention to *McMahon* v. *United States*, 342 U. S. 25, 27, and *Pillsbury* v. *United Engineering Co.*, 342 U. S. 197, 200.

The *McMahon* case dealt with an injured seaman who was required to bring suit *within two years after the cause of action arises*, and the Court held that the date of injury was the determining factor.

In the *Pillsbury* case, the Statute provided that the right for compensation for disability would be barred "unless a claim therefore is filed *within one year after the injury.*" (Italics supplied.)

In the first place, the Statutes are entirely different; and, in the second place, the injury to those claimants was upon a day certain. In the subject case, it could not be determined whether there was or was not injury, until the Army refused to pay in accordance with the implied contract, which it did June 11, 1949.

At pages 8 and 9 of Brief in Opposition, referring to *Dino* v. *United States,* 119 C. Cls. 307, the United States seeks to minimize the true meaning of the decision in that case. True, the form of the petition was inadequate, but the Court went further than mere form and held that the claimant there was first required to submit his claim to "proper officials of the War Department," (which in these cases was the Army Claims Service legally set up to hear the claims), before he could sue in the Court of Claims. That being so, the claim could not accrue until such a demand had been made and payment had been refused. There was no breach of contract until then.

The Court of Claims has held that, if the *law requires* seeking administrative relief, then the Statute is suspended, but if that is not required by the Statute, then seeking administrative relief does not toll the Statute. This Court has never passed upon this question squarely, and certainly should.

Where goods and services are supplied voluntarily upon request of the Government or are demanded by force of arms, there being an implied contract always that the supplier will be compensated, in either event, the Government should be given an opportunity to pay or to refuse payment. That was, in substance, the holding in the *Dino* case, *supra,* whether the Court was required to dismiss the case on other grounds, or not. It did not do so.

During the period when the Administrative Branch, which has made the *quasi* contract, is considering the case, the

Statute of Limitations should be held to be suspended. Where this Court has wanted to do so, it has, in substance, so held. *United States* v. *Clark*, 96 U. S. 37, *United States* v. *Taylor*, 104 U. S. 216, *United States* v. *Smith*, 105 U. S. 620. (Petition, pp. 8-11.)

The Date September 2, 1945, Has No Basis in Fact or in Law

In the *Marcos* case, there was submitted to the Court of Claims, at its request for argument on the effect of the Trading with the Enemy Act upon the suspension of the Statute of Limitations, a memorandum from a person who was present in the Philippine Islands during the chaotic conditions after the surrender of Japan, September 2, 1945 (App. 1). This statement is not proof—it is purely a restatement of notorious facts to be found in many publications in the Library of Congress, of which this Court can very well take judicial notice. Certainly, the Filipinos, spread over the hundreds of islands, had no practical way of getting a petition to the Court of Claims prior to the end of 1946, and no way of paying the filing fee of $10.00, which is mandatory.

A filing fee of $10.00 had to accompany the petition. The Philippine National Bank did not open until July, 1946. The Secretary of the Treasury of the United States did not permit the transfer of funds from the Philippines to the United States until August 31, 1946. (App. C of Pet., p. 31.) Hostilities in some islands were just then ending. (App. 1.) True, Japan gave up its sovereignty on September 2, 1945, but there was no complete cessation of hostilities in fact until thereafter and no official ending until December 31, 1946. (App. 1 and App. B, Pet. p. 19).

In law, September 2, 1945, is erroneous. Under the Trading With The Enemy Act, certainly funds could not legally be transferred from the Philippines to the United States until August 31, 1946.

Furthermore, it was only on December 31, 1946, that the President of the United States proclaimed the cessation of hostilities of World War II. (App. B, Pet. p. 19.)

CONCLUSION

The decision of the Court of Claims in the subject case was incorrect and the questions involved are of such general importance as to require a decision by this Court, whether or not the Court reaches the question the United States proposes to present upon a petition for writ of certiorari in the *Marcos* case, a year or two hence, after expensive trials of several cases.

Respectfully submitted,

PREW SAVOY,
Counsel for Petitioners.

GEORGE A. NUGENT,
H. H. MARTIN,
Of Counsel.

APPENDIX 1

Affidavit

ROGER E. BROOKS, being duly sworn, deposes and says as follows:

1. I am a citizen of the United States engaged in the practice of law in Washington, D. C., and Honolulu, Hawaii.

2. In February 1942 I was sent by the United States Comptroller of the Currency to Honolulu, Hawaii, to take over and liquidate all the Japanese banks in the Pacific area.

3. In 1943, while in Honolulu, I was appointed by the United States Alien Property Custodian as Manager of his Honolulu office, with the duty and responsibility of administering all enemy property subject to the Custodian's jurisdiction in the Pacific area.

4. In May 1945, on the instructions of the Alien Property Custodian, I proceeded to the Philippine Islands to determine whether there was in the Philippines sufficient enemy-owned property to justify the cost of establishing an office of the Office of Alien Property Custodian. I arrived in Manila by U. S. military plane in early May 1945 and proceeded to make the required survey to determine the nature and extent of Japanese-owned property. I returned to the United States to report my findings on or about July 12, 1945. It was then decided to establish an office of the Office of Alien Property Custodian for the Philippines in Manila, and I returned to the Philippines as Manager of such office in the middle of September 1945. I continued in that capacity until late in February 1947 and remained in the Philippines from September 1945 to February 1947 except for two absences in the United States on business connected with my office, one for about three weeks in February 1946, and the other for about three months in the fall of 1946.

5. During my survey trip in the period May to July 1945, I covered substantially the entire area of the Philippines, including the island of Mindanao, where there was substantial Japanese property. I was, however, unable to visit Northern Luzon because the continued fighting there made this impossible until much later.

6. In June 1945, I arrived by U. S. Army plane at Davao, the principal city of Mindanao. Our military forces had captured Davao City, but fighting continued in the hemp fields south of the city. I flew over the area in an Army plane and actually saw the battle. This was toward the end of June 1945.

7. The fighting continued even beyond the formal surrender of Japan (September 2, 1945), with the cleaning up of isolated groups of the enemy, especially on Northern Luzon; and skirmishes even outside of Manila itself at least as late as June 1945. I personally saw at that time battle casualties brought into the hospitals in Manila.

8. I am definitely of the opinion that there were no commercial means of transportation and communication among the Islands as late as December 31, 1945, and no ships or planes were operating other than those of our armed forces. This condition, I am positive, continued certainly until early spring of 1946.

So far as my offices were concerned, communication between Manila, the principal office, and the Davao Branch Office was entirely by army radio, and transportation was by army planes until after December 31, 1945.

My recollection is that there was no telephone service for civilians until well after January 1, 1946.

9. Even in Manila, a city of approximately a million and a half population, all normal life was completely disrupted throughout the year 1945. Large areas were devastated. Water mains were broken, telephone and telegraph lines were down. Surface transportation hardly existed except by mili-

tary vehicles, and the only lighting was furnished by our military. With few exceptions, all government buildings had been severely damaged or completely destroyed. The city of Davao, largest city on the island of Mindanao, located on the southeast coast, was severely damaged, as were most of the towns and cities throughout the Philippines. Land transportation was almost impossible due to the destruction of roads and bridges. Travel among the Islands is only possible by plane or boat, as there are large bodies of water separating them.

Conditions were truly chaotic throughout the Philippines until well into the year 1946.

/s/ ROGER E. BROOKS
ROGER E. BROOKS

Subscribed and sworn to before me this 25th day of June, 1952.

(Sgd) ELIZA W. MERRILL
Notary Public, D. C.

My commission expires: Nov. 30, 1953.

(NOTARIAL SEAL)

APPENDIX 2

October 9, 1952

Honorable Robert Stern
Acting Solicitor General
Department of Justice
Washington, D. C.

Re: Flaviana Tan, et als, v. *United States, No. 382.*

Dear Mr. Stern:

On October 7, 1952, I filed a Petition for a Writ of Certiorari in the Supreme Court of the United States in the above-entitled case.

I have just been advised that Mr. Ernest Schein has filed a similar petition on behalf of the following:

Francisca De Guia and Beatriz B. Palmares
Court of Claims No. 50342
Pauling Lorenzo—Court of Claims No. 50357
Raymundo F. Novarro—Court of Claims No. 50358

In the case of *Compania Maritime,* No. 50165, Court of Claims, I have noted from the Government's answer that the Government admits the taking of the property involved and that the only questions remaining are the value thereof and the Statute of Limitations, which was specifically pleaded. Counsel for the plaintiff advises me that negotiations have been going on with a view to reaching an agreement as to the value of the property, but that the question of the Statute of Limitations will be left open, and that Government counsel has indicated to him that the Government will persist in its position respecting it.

In the cast of *Marcos* v. *United States,* No. 50278, Court of Claims, in which I am of Counsel, the Court of Claims has taken jurisdiction, which will require a trial on the merits and the taking of testimony in the Philippines in connection

therewith. In that case, which is the basic case upon which the decision in the *Tan* case is based, Government counsel has indicated that the Government will persist in its position taken in the Court of Claims with respect to the Statute of Limitations.

All of the foregoing means to me that the Government will petition for a Writ of Certiorari at some time in the future respecting the application of the Statute of Limitations, whether or not it was tolled during the war, and for what period, in Philippine requisition cases.

In these circumstances, it would seem reasonable for me to request that your Department not oppose the granting of the writ in the *Tan* case and in the cases represented by Mr. Schein, so that the question of the application of the Statute of Limitations may be determined in those cases. The basic questions involved in all of these cases are the same and can be determined without the necessity of a trial on the merits in cases where the Government has lost. There would seem to be no valid reason to put plaintiffs and their counsel, as well as the Government, to what may well be unnecessary expense.

In addition, if the petitions are denied in the subject cases and granted in the cases which the Government desires to and will seek to bring up, it would be extremely unfair to these claimants.

I trust you will give this request your serious and favorable consideration.

Very truly yours,

PREW SAVOY

DEPARTMENT OF JUSTICE
OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

October 17, 1952

Mr. Prew Savoy
World Center Building
Sixteenth and K Streets, N. W.
Washington, D. C.

Re: Tan v. *United States, No. 382, O.T., 1952*

Dear Mr. Savoy:

I have your letter dated October 9, 1952, in which you inquire whether the United States would be willing to acquiesce in the granting of the above entitled petition for a writ of certiorari.

I understand that you had a conference in this matter with Mr. Gamer and several other attorneys of the Claims Division in which Government counsel were of the opinion that they could not accede to your request.

I do not feel that I can make a final decision in this matter at the present time before I have examined the draft opposition to be prepared by the Claims Division. This, of course, will have to await the service upon the Department of the printed record and petition.

Sincerely yours,

ROBERT L. STERN,
Acting Solicitor General

October 28, 1952

Honorable Robert L. Stern
Acting Solicitor General
Washington, D. C.

Re: Tan v. *United States, No. 382, O.T., 1952*

Dear Mr. Stern:

Reference is made to your letter of October 17, 1952, in reply to my letter of October 9, 1952, in which you say that you understand I have conferred on this matter with attorneys in your department who were of the opinion that they could not accede to my request and that a final decision by you will not be reached until my printed record and petition have been served upon you.

I did not attend the conference mentioned in your letter as I had no knowledge that such a conference would be held. I understand that Mr. Ernest Schein did have such a conference in relation to his cases.

If, for any reason, you conclude that you cannot accede to my request, or reach the same result in some other manner so that the case may not be heard upon the merits by the Supreme Court, I would appreciate a conference on the subject with your department prior to the filing of the Government's reply to my petition for a writ of certiorari.

Very truly yours,

PREW SAVOY

DEPARTMENT OF JUSTICE
OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

November 18, 1952

Prew Savoy, Esq.
World Center Building
Washington, D. C.

Re: Flaviana Tan, etc. v. *United States, No. 382*

Dear Prew:

In accordance with your request, I am sending you a copy of the page proof of the Government's brief in opposition. You will particularly note footnote 7 in which we state that if it were thought that the Court would reach the point of the *Marcos* case, we would not oppose certiorari. That leaves it up to the Court.

With personal regards.

Sincerely yours,

/s/ Bob
Robert L. Stern,
Acting Solicitor General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

Prew Savoy, Esq. November 20, 1952
World Center Building
16th and K Streets, N. W.
Washington, D. C.

Re: Flaviana Tan, et al. v. *United States,*
U. S. Sup. Ct., Oct. Term, 1952, No. 382

Dear Mr. Savoy:

Your letter of November 14, 1952, asks me not to oppose the petitions for writs of certiorari in the *Tan and allied De Guia* cases.

The ground most strongly urged by you and the other interested attorneys for the Government's acquiescing in these petitions is that they present the same issues as are raised in *Marcos* v. *United States,* Ct. Cls. No. 50278, and the *Marcos* issues admittedly affect a substantial number of pending cases. The Government's Briefs in Opposition, which you will receive shortly, place the facts relating to the importance of the *Marcos* issues before the Supreme Court, and also indicate that the Government would not oppose certiorari in these cases if it believed that the Court would or should reach the *Marcos* issues. If the Court feels, contrary to our view, that these issues are likely to be reached, it will have before it the Government's agreement that these matters are important, and will, of course, grant certiorari if it desires to settle the broader questions.

As for the equities of the situation, the Government is bound by law to raise the defense of the statute of limitations, when it is believed to be applicable, and neither I nor any other executive official is authorized to waive it. Congress, as you know, is in a different position.

Sincerely yours,

JAMES P. MCGRANERY,
Attorney General.